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IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 1393 /2003

Petitioner : UDAL, S/o Nandlal Suryavanshi,
Timber Mistry T. No. 1962,
R/o Vivek Nagar Colony,
Qr. No. M/353, P.O. Kelauhari,
P.S. Chachai, Teh. Anuppur,
District Shahdol (M.P.)
Permanent Address -
Village Pakaria, P.O. Korabhat,
Thana Shivrinarayan,
Tah. Pamgarh, Distt Janjgir (C.G.)

P.R. No. 1393/03 Presented by Shri Alok Shrivastava Dated 26/09/03

VERSUS

Respondents :
1. Chairman-cum
Managing Director,
S.E.C. Ltd., Seepat Road,
Bilaspur (C.G.)

2. The General Manager,
S.E.C. Ltd., Sohagpur Area,
P.O. Dhanpuri,
Distt. Shahdol (M.P.)

3. Manager/Superintendent of Mines
S.E.C. Ltd., Bangwar Project,
Sohagpur Area, P.O. Bimouhari,
P.S. Dhanpuri, Tah. Anuppur
Distt. Shahdol (M.P.)

4. Chief Personnel Manager,
S.E.C. Ltd., Sohagpur Area,
P.O. Dhanpuri, P.S. Amlai
Tahsil Sohagpur,
Distt. Shahdol (M.P.)

शपथ आयुक्त एस.के. शुक्ला बिलासपुर (छ.ग.) बिलासपुर तहसील छोड़

A.K. Gupta

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF APPROPRIATE WRIT, DIRECTION AND/OR ORDERS.

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1393 of 2003

Udal

- Versus -

C.M.D., South Eastern Coalfields Ltd. and three others

POST FOR ORDER ON 15th *MARCH, 2004*

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1393 of 2003

Udal

- Versus -

C.M.D., South Eastern Coalfields Ltd. and three others

Present: -

Mr. Anil K. Gupta, Advocate: For the petitioner

Mr. Dhirendra Mishra, Advocate: For the respondents

Before Hon'ble Mr. L.C. Bhadoo, J.

ORDER

(Passed on 15th March, 2004)

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, being aggrieved by the action of the respondents, for not accepting the date of birth of the petitioner as 04.04.1952 as per the market sheet and school leaving certificate nor the petitioner's case is being referred to the Age Determination Committee for determination of the age of the petitioner.

2. The petitioner's case is that he was appointed on 31.03.1976. He studied up to 5th standard in Hindi medium and passed 5th standard in the year 1964 from Government Prathmik Pathshala, Pakaria, in the erstwhile District: Bilaspur and the mark sheet to that effect is Annexure P-1 and school leaving certificate (Transfer Certificate) is Annexure P-2. The petitioner is presently working as Timber Mistry bearing token No.1962 in Bangwar Project of South Eastern Coalfields Limited, Sohagpur Area, District: Shahdol (M.P.). At the time of initial appointment of the petitioner at Chachai, District: Shahdol, he had informed his date of birth as 04.04.1952. He had all along been in the belief that his date of birth is 04.04.1952. The petitioner was never informed by the respondents that his date of birth is recorded other than 04.04.1952. The petitioner was transferred from Chachai to Bangwar Project in the year 2001 and it was at that time pointed out to him that as per his service records, the date of birth is recorded as 01.04.1944 instead of 04.04.1952. Due to the mistake committed by the respondents, incorrect date of birth of the petitioner

was recorded. When the petitioner came to know about this fact, he made several representations (Annexures P-3, P-4, P-5 & P-6) to respondents 2, 3 and 4, requesting them to correct the date of birth, but to no avail. Ultimately the petitioner submitted a representation dated 11.11.2002 (Annexure P-7) and requested to refer his case to the Age Determination Committee as per N.C.W.A-II, dated 5th February, 1981 (Annexure P-9) and also as per Implementation Instruction No.76 dated 25th April, 1988 (Annexure P-10). But nothing was done and ultimately the petitioner was served a letter dated 28.02.2003 (Annexure P-8) informing him that it is not possible for them to consider his case and further that he has disclosed his date of birth as 04.04.1952 at a very later stage, therefore, they are not able to take any action. As per the provisions contained in Implementation Instruction No.76 dated 25.04.1988, the respondents ought to have referred the matter to the Age Determination Committee. Therefore, the respondents be directed to refer the matter of the petitioner to Age Determination Committee or the respondents be directed to correct the petitioner's date of birth as per Annexures P-1 & P-2 i.e. as 04.04.1952.

3. Return has been filed on behalf of the respondents in which it has been mentioned that the date of birth of the petitioner as given by him at the time of his appointment was recorded in the service book. He was appointed on 31st March, 1976 to the post of Timber Man and at that time, he had given his age as 35 years as on 01.04.1979 and according to his information his date of birth was recorded as 01.04.1944. At the time of initial appointment, the petitioner did not produce any educational certificate and on the contrary he put his thumb impression over the service book thus showing himself to be illiterate. Now at the fag end of the service when he has to retire on 01.04.2004, he has raised a dispute about his date of birth with a view to get ten years extension of service. However, during the period of 25 years, he never objected at any point of time regarding his date of birth in the service book. Therefore, the petition is liable to be dismissed. It is further mentioned that the petitioner himself put his thumb impression in the service book and Form-B. He did not produce the documents (Annexures P-1 & P-2) at the time of joining in service. He entered into the service of SECL in the year 1979 and as per his own showing he was 35 years of age on 01.04.1979 and on this basis his date of birth was taken as 01.04.1944. The name of the petitioner finds place in Form-B register of Bangwar Project at S.No.3332 and his date of appointment is shown as 31.03.1976 and his age is shown as 35 years on 01.04.1979.

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Since the age of the petitioner has been correctly mentioned in the service book, Form-B and other documents available in the Colliery and there is no difference in the entries, his case was not referred to the Age Determination Committee as per Implementation Instruction No.76 issued under NCWA-III. The relevant Implementation Instruction No.76 is Annexure R-1. Copies of the service book of the petitioner and the entries made in Form-B are Annexures R-2 & R-3. Therefore, the petition of the petitioner be dismissed.

4. I have heard the learned counsel for the parties.

5. Learned counsel for the petitioner submitted that the petitioner was informed about the entry of his date of birth as 01.04.1944 for the first time in the year 2001, then he came to know about the wrong entry of his date of birth as 01.04.1944 instead of 04.04.1952. Therefore, he made representations and also produced the school leaving certificate as well as mark sheet in which the date of birth of the petitioner is recorded as 04.04.1952. Therefore, there was a dispute and the case of the petitioner ought to have been referred to the Age Determination committee.

6. On the other hand, learned counsel for the respondents submitted that Form-B is the authentic document in which the date of birth of the petitioner was recorded as 01.04.1944 to which the petitioner never challenged and at the fag end of his career, now, he is challenging the same. He further argued that in Form-B, the petitioner has affixed his thumb impression as an illiterate person in the year 1976, whereas, now he is producing the educational certificate that he has passed 5th standard. If he was literate then why he had not put his signature in Form-B. This fact itself creates doubt about the certificate submitted by the petitioner at the belated stage. Learned counsel for the respondents further submits that at the fag end of his career, the petitioner is not entitled to challenge his date of birth as has been held by the Hon'ble Apex Court in the matter of **G.M., Bharat Coking Coal Ltd., West Bengal vs. Shib Kumar Dushad and others** reported in **AIR 2001 Supreme Court 72**.

7. After hearing the counsel for the parties, I have perused the records. The petitioner's case is that for the first time, he came to know about the incorrect date of birth and made representations and submitted the mark sheet (Annexure P-1) and school-leaving certificate (Annexure P-2), in which the

date of birth is recorded as 04.04.1952. He obtained these certificates in the year 2001; in order to prove his date of birth.

8. Learned counsel for the petitioner submitted that at the time of appointment, the respondents, simply, obtained the thumb impression of the petitioner and mentioned his age as 35 years as on 01.04.1979 and in the service excerpts also they mentioned his age as 35 years as on 01.04.1979. As per the school leaving certificate and the mark sheet, the date of birth of the petitioner is 04.04.1952.

9. Perusal of Annexure R-2, the service register, shows that in the column of date of birth, it is mentioned "35 years" and the age is recorded as on 01.04.1979 and thumb impression of the petitioner has been obtained. In this column between the figure '35' and 'as on 01.04.79' some words are overwritten and there is some correction. If we look into Annexure R-3, the service record excerpts, in column No.6 (i) 'Janm Tithi', 35 years has been written and against that as on 01.04.79 was also written. In the column of family members, the age of the wife of the petitioner is recorded as 28 years, whereas his son's age has been recorded as 14 years. This fact itself shows that with much care the service record is prepared by the respondents. When the age of the wife of the petitioner was written as 28 years and the son's age was recorded as 14 years, then how it is possible to conceive a child by a lady at the age of 14 years. Therefore, it seems that Annexures R-2 & R-3 were prepared only on the guesswork. The petitioner's case is that he was informed about the entry of date of birth i.e. he came to know about the wrong entry of his date of birth in the year 2001 and he submitted the documents, Annexures P-1 & P-2. If we look into the Implementation Instruction No.76 dated 25th April, 1988, clause A (ii) of Annexure-1 lays down that in the case of non-matriculates but educated, the appointees who have pursued studies in a recognized education institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth. If the school-leaving certificate is alleged to be a forged or a fake one, the respondents could have made inquiry about the genuineness of the certificate. When there is a dispute regarding the date of birth entered in the school leaving certificate and the date of birth recorded in the service records, the respondents ought to have resorted the procedure as envisaged in Clause C of the said Implementation Instruction No.76 which lays down that "where there is a variation, in the age recorded in the records mentioned above, the matter will

be referred to the Age Determination Committee/Medical Board constituted by the Management for determination of age".

10. In this case, there is not a small variation, but the difference of age as claimed by the respondents and the petitioner is eight years. In this given situation, the Age Determination Committee after getting the petitioner medically examined could have easily ascertained the age of the petitioner. Therefore, the respondents ought to have resorted to the procedure mentioned in clause C of the Implementation Instruction No.76.

11. Now, coming to the judgment cited by the learned counsel for the respondents [**G.M., Bharat Coking Coal Ltd., *(supra)***], if we look into the judgment, in that case the employee was not even satisfied by the decision of the Age Determination Committee. In that case also the matter was referred to the Age Determination Committee, because there was discrepancy in the date of birth entered into the register maintained under the Mines Act and the date mentioned in the Sirdar's Certificate. Therefore, as per the settlement arrived at between the Management and the Union, the matter was referred to the Board to determine the correct date of birth and the employee filed the writ petition aggrieved by the decision of the Medical Board. The Hon'ble Apex Court allowed the appeal and set aside the order of the High Court.

12. Therefore, in this matter the respondents ought to have resorted to the procedure envisaged under clause C of the Implementation Instruction No.76 and referred the matter to the Age Determination Committee.

13. In the result, the writ petition is allowed and the respondents are directed to refer the matter of the petitioner to Age Determination Committee for determination of age and to act according to the finding of the Age Determination Committee. Till the decision of Age Determination Committee, the petitioner be allowed to continue in service.

Sd/-
L.C. Bhadoo
Judge

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